

Reference to Judgment of the District Court

The order of the United States District Court for the Northern District of Ohio, Connell, J., dismissing the complaint is contained in the terminal portion of the court's opinion. The opinion is in the appendix to the petition for a writ of certiorari (which is attached to the petition) and is at page 70a.* The order is at 82a.

* References in this Appendix to the appendix attached to the petition for a writ of certiorari will hereafter be made as ____a. Cross-references to pages of *this* Appendix and references in the brief will hereafter be made as ____A.

The Complaint

The complaint in this action is printed in the appendix to the petition for a writ of certiorari at 83a.

Motion to Dismiss of Defendant James Rhodes
IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

Civil Action No. C70-859

SARAH SCHEUER, Administratrix of the Estate of
Sandra Lee Scheuer, Deceased,

Plaintiff,

—v.—

JAMES RHODES, ETC., et al.,

Defendants.

1. Now comes the defendant, James A. Rhodes, Governor of the State of Ohio, and respectfully moves this Court, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, for an order dismissing the several alleged causes of action in the complaint herein for the reasons:

- (1) The Court lacks jurisdiction of the subject matter, because this defendant is sued in his representative capacity as a public official and agent of the sovereign state of Ohio; therefore, the action is one essentially against the State of Ohio which has not consented to be sued by waiving its constitutional right to sovereign immunity;

Motion to Dismiss of Defendant James Rhodes

- (2) That, as a matter of law, it affirmatively appears from the complaint of plaintiff that, while no negligent, willful or wanton act of defendant James A. Rhodes, Governor, has been committed, it further affirmatively appears that any act or omission on the part of Governor James A. Rhodes, defendant herein, was remote from the injury to and death of plaintiff's decedent, and was separated therefrom by a substantial intervening cause.

Respectfully submitted,

TOPPER, ALLOWAY, GOODMAN,
DeLEONE & DUFFEY

By /s/ R. BROOKE ALLOWAY
R. Brooke Alloway,
*Attorneys for Defendant
James A. Rhodes, Governor
of the State of Ohio*

**Reference to Exhibits to Motion to Dismiss
of Defendant James Rhodes**

Two Exhibits were attached to Defendant Rhodes' motion to dismiss. They were reprinted in their entirety in the opinion of the Court of Appeals as an appendix to the opinion of Judge Weick. The exhibits were reprinted in the appendix to the petition for a writ of certiorari as part of Judge Weick's opinion at pages 23a and 25a.

**Motion to Dismiss of Defendants Del Corso,
Canterbury and White**

**IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
Civil Action No. C70-859**

**SARAH SCHEUER, Administratrix of the Estate of
Sandra Lee Scheuer, Deceased,**

Plaintiff,

v.

JAMES RHODES, et al.,

Defendants.

MOTION TO DISMISS

Now come the defendants and respectfully move this Court, pursuant to Rule 12 b(1) of the Federal Rules of Civil Procedure, for an order dismissing two causes of action in the complaint herein because the Court lacks jurisdiction of the subject matter. These defendants are sued in their representative capacities as public officials and agents of the sovereign state of Ohio. Because it appears from the body of the complaint that the matter involved is one in which the State of Ohio is primarily concerned and will be affected by any judgment rendered herein, the action is one essentially against the State of

*Motion to Dismiss of Defendants Del Corso, Canterbury
and White*

Ohio which has not consented to be sued by waiving its constitutional right to sovereign immunity.

Respectfully submitted,

CRABBE, NEWLON, POTTS, SCHMIDT,
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By CHARLES E. BROWN
Attorney for Defendants

Motion to Dismiss of Defendants Del Corso,

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

Civil Action No. C70-859

**SARAH SCHEUER, Administratrix of the Estate of
Sandra Lee Scheuer, Deceased,**

Plaintiff,

—v.—

JAMES RHODES, Governor of The State of Ohio, et al.,

Defendants.

MOTION TO DISMISS

Now come the defendants, Major Harry D. Jones, Captain Raymond J. Srp, and Captain John E. Martin, duly commissioned officers of the Ohio National Guard, and respectfully move this Court, pursuant to Rule 12 (b) (1) of the Federal Rules of Civil Procedure for an order dismissing the Complaint herein because the Court lacks jurisdiction of the subject matter:

- (a) These defendants are sued in their representative capacity as military officers and agents of the sovereign State of Ohio, because it appears from the caption and the body of the Complaint that the matter involved is one in which the State of Ohio

Motion to Dismiss of Defendants Jones, Martin and Srp

is primarily concerned and will be affected by any judgment rendered herein, and the action is essentially against the State of Ohio, and the State of Ohio has not consented to be sued by waiving its constitutional right to sovereign immunity.

- (b) Aside from Ohio being the real party in interest and therefore being immune to civil suits, defendants are thus immune to civil suits by the statutory law of the State of Ohio.
- (c) It is evident from the body of the Complaint that while no negligent, willful, wanton actions of these defendants has been committed, and it affirmatively appears from the body of the Complaint that any act or omission to act by these defendants was remote from the injury to and death of plaintiff's decedent and was separated therefrom by a substantial intervening cause.

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*Attorney for Major Harry D. Jones
and Captain John E. Martin*

Reference to Opinion and Order of District Court

The opinion and order of the District Court is printed in the appendix to the petition for a writ of certiorari at 70a.

Reference to Opinion of Court of Appeals

The opinion of the Court of Appeals is printed in the appendix to the petition for a writ of certiorari at 1a. Judge Weick's opinion starts at 3a, Judge O'Sullivan's concurring opinion starts at 27a and Judge Celebrezze's dissenting opinion begins at 32a.

**Synopsis of Pertinent Material Filed in
United States Supreme Court**

To date, the following has been filed in this Court in this case:

1. Petition for a writ of certiorari.
2. Brief of Respondents Del Corso, Canterbury, Jones, Martin, Srp and White in opposition to petition for writ of certiorari.
3. Brief of Respondent Rhodes in opposition to petition for writ of certiorari.
4. Petitioner's reply brief in support of issuance of writ of certiorari.

The writ of certiorari in this case was granted at the same time as that in *Krause v. Rhodes*, No. 72-1318 and the cases were set for argument in tandem.